

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JOSHUA DAVID MARTINEZ

§

§

v.

§

C.A. NO. C-08-197

R. MENCHACA, ET AL.

§

ORDER

Plaintiff is an inmate in the Texas Department of Criminal Justice, Correctional Institutions Division, and is currently incarcerated at the McConnell Unit in Beeville, Texas. Proceeding pro se, he filed a civil rights action pursuant to 42 U.S.C. § 1983. (D.E. 1). Pending is plaintiff's motion for a written order. (D.E. 186). Specifically, he "is requesting that this court order the Defense Counsel to issue a subpoena for testimonial on Ms. Fernandez to command her attendance on the McConnell Unit on June 8, 2009 at 10:00 a.m." Id. at 1.

Plaintiff's request that defense counsel issue his subpoena is inconsistent with the requirements of the Federal Rules of Civil Procedure. See Fed. R. Civ. P. 45.¹ Moreover, it is unclear why the deponent would need to respond to a deposition by written questions at the McConnell Unit. Instead, she would merely need to answer the questions in compliance with the Federal Rules of Civil Procedure and the Federal Rules of Evidence.

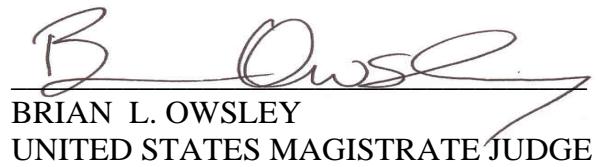
In order for the Court to issue the subpoenas, the deponent's address would have to be provided as well as the witness fees and costs of the subpoenas. The fact that plaintiff is indigent does not necessarily obviate the need for such fees. See Cupit v. Jones, 835 F.2d 82, 86 (5th Cir. 1987). He must demonstrate that the testimony obtained through a deposition will be not only

¹ Indeed, in an order dated May 19, 2009, it was noted that "Plaintiff has not served a subpoena on Ms. Fernandez pursuant to Rule 45." (D.E. 183, at 2). His pending motion does not address his obligations under the Rule.

relevant but he must “demonstrate[] a substantial showing of need for the testimony.” *Id.* at 86-87.

Accordingly, plaintiff’s motion for a written order, (D.E. 186), is DENIED without prejudice.

ORDERED this 29th day of May 2009.


BRIAN L. OWSLEY
UNITED STATES MAGISTRATE JUDGE